GOVERNMENTAL ETHICS COMMISSION 2010 UAL

PREFACE

This annual report and recommendations is submitted to the Governor and the Legislative Coordinating Council for transmittal to the Legislature pursuant to K.S.A. 25-4119a and K.S.A. 46-1212c. With some exceptions, the report covers the period from July 1, 2009, through June 30, 2010, the end of Fiscal Year 2010. Occasionally, data for the first quarter of Fiscal Year 2011 is used in order to provide a more complete picture of the Commission's operations.

Table of Contents

Mission	2
Agency Philosophy	2
Commission Members	3
Staff	3
Budget	5
Legislative Activity	6
Organization and Operation	6
A. Education and Public Awareness	6
B. Advisory Opinions	7
C. Review and Audit Program	8
1. Campaign Finance	8
2. Conflict of Interests	9
3. Representation Case Disclosure	10
4. Lobbying	10
D. Investigations	12
E. Enforcement Programs	12
1. Complaints	12
2. Civil Penalties and Fines	12
Commission Recommendations	14
Appendix I - Summary of Advisory Opinions Issued in FY 2010	15
Appendix II - Statistical Comparison of Lobbying Expenditures 2000 - 2010	18

Mission:

The Governmental Ethics Commission works to foster public trust and confidence in state government decision-making through education, administration and enforcement of the Campaign Finance Act and State Governmental Ethics Laws.

The Kansas Governmental Ethics Commission was established by the Kansas Legislature in 1974 to administer, interpret, and enforce the Campaign Finance Act (K.S.A. 25-4142 et seq.) and laws relating to conflict of interests, financial disclosure, and the regulation of lobbying (K.S.A. 46-215 et seq.). These laws establish the public's right to information about the financial affairs of Kansas' public officials, lobbyists, and candidates for state and local office. The Commission also renders advisory opinions and can adopt rules and regulations under a less comprehensive conflict of interests law covering local government officials and employees (K.S.A. 75-4301 et seq.).

Agency Philosophy:

The Kansas Governmental Ethics Commission believes the strongest safeguard against unethical conduct by public officials and employees is an informed and active public. For the disclosure elements of the legislation to have meaning, the public must be made aware of the legislation and the financial disclosure information must be accessible to the public. To this end, the Commission and its staff will approach their duties with a dedicated sense of purpose and responsibility to the individuals subject to the Campaign Finance Act and State Governmental Ethics Laws and the citizens of Kansas by performing their activities in an efficient and impartial manner.

Commission Members

The Kansas Governmental Ethics Commission is a nine member, bipartisan, citizen commission authorized by K.S.A. 25-4119a. Members serve two year terms with the Commission's Chairman appointed by the Governor. The Vice-Chairman is elected by the membership. Commission appointments are made by the Governor, Attorney General, Secretary of State, Chief Justice of the Supreme Court, President of the Senate, Minority Leader of the Senate, Speaker of the House of Representatives, and the Minority Leader in the House. The Governor makes two appointments, each from a different political party.

The Commission usually meets once a month. The Commission's meetings are open to the public and information prepared by the staff for each meeting is available to the public. During FY 2010, the Commission held 11 meetings. Meetings are scheduled to address a variety of matters including the review of and action on complaints filed, investigations undertaken, and audits performed. In addition, the Commission issues advisory opinions to answer questions involving interpretation of a particular section of the law, it makes policy decisions, amends and adopts new administrative regulations and handles administrative matters including personnel, budget preparations, office procedures, etc.

Commission Staff

The staff of the Commission assumes all responsibility for the daily operations of the agency which include administration, legal, investigative, audit, information technology, and clerical functions. As a service oriented agency, staff strives to assist individuals in complying with applicable laws by responding quickly, efficiently and impartially. Commission staff also works diligently to get campaign finance and lobbying data compiled, entered and posted on the Internet to be viewed by the citizens of Kansas.

Commission Members

Sabrina Standifer, Chairwoman, Democrat, Wichita

Term expires January 31, 2012

Barbara Barnard, Republican, Topeka

Term expires January 31, 2011

Sue Krische, Republican, Topeka

Term expires January 31, 2011

Gerald Goodell, Republican, Topeka

Term expires January 31, 2012

Glenn Kerbs, Democrat, Dodge City

Term expires January 31, 2012

John Reimer, Independent, Galva

Term expires January 31, 2011

Mark Simpson, Democrat, Lawrence

Term expires January 31, 2011

John Solbach, Democrat, Lawrence

Term expires January 31, 2011

Elon Torrence, Republican, Topeka

Term expired January 31, 2010

FY 2010 Commission Staff

Executive Director, Carol Williams
Commission & Staff Attorney, Judy Moler
Local Campaign Finance Director, Jana Atchison
IT Specialist, Kelley Cochran
Auditor, Open position
Auditor, Alyssa Miller
Investigator, Bill Beightel
Report Examiner, Karina Renna
Office Manager, Donna Williams
Lobbyist Coordinator, Ruth Pile

Budget

In FY 2010, the Commission was appropriated \$667,993 from the State General Fund with a fee fund limitation of \$252,952. The following chart reflects revenue and expenditures for the fiscal year.

Fiscal Year 2010 Budget	Actual
Revenue:	
State General Fund	\$415,020
Fee Fund Limitation	\$143,124
Total Revenue	\$558,144
Expenditures:	
Salaries & Benefits	\$458,173
Contractual Services	\$ 94,641
Commodities	\$ 3,599
Capital Outlay	\$ 1,731
Total Expenditures	\$558,144

Legislative Activity

One piece of legislation was enacted by the 2010 Legislature which impacts the State Governmental Ethics Laws. Senate Bill 131 will require faculty members employed by state educational institutions who earn salaries of \$150,000 or more to file Statements of Substantial Interest forms with the Secretary of State's office. Current law requires faculty members earning salaries of \$50,000 or more to file such statements. This change in law should reduce the number of Statement of Substantial Interest filings by approximately 2,300 each year.

Organization & Operation

The Commission's efforts focus on full compliance with the Kansas campaign finance, conflict of interests, and lobbying statutes. Each year the Commission receives thousands of financial disclosure reports filed by candidates, political and party committees, public officials and lobbyists. Staff time is devoted to assuring the accurate and timely disclosure of required financial information about those in state and local government. The processing and evaluation of filed reports and statements and an analysis of the supporting records, where appropriate, are crucial to the Commission's efforts. It is through the initial and comprehensive review of these reports, and the later audit and investigation when necessary, that the Commission can determine compliance with the laws.

The Commission's work program encompasses six areas: (1) education and public awareness; (2) advisory opinions; (3) reviews and audits; (4) investigations; (5) enforcement (including the filing of complaints, holding public hearings and assessing civil penalties); and (6) general administrative activities.

Education & Public Awareness

The Commission's goal remains to improve communications regarding the reporting requirements of those subject to one or more of the disclosure laws, and to increase public awareness with respect to the impact and importance of information contained in the reports filed. The Commission's website has become an efficient instrument for disseminating and distributing Commission information. Information concerning the Commission, the advisory

opinions it issues, scanned copies of state level candidate, party committee and political action committee campaign finance reports, campaign finance and lobbying reporting forms, and campaign election and lobbying statistics can be found at www.kansas.gov/ethics.

The Commission utilizes informational brochures, the Internet, the news media, and speaking engagements to inform not only those under the Commission's jurisdiction, but also the public about the laws and their meaning. Statistical information is summarized and printed, in addition to being posted on the Commission's website, in the areas of campaign finance and lobbying. However, most time in this area is devoted to informing those directly covered by the laws of their duties and responsibilities. To accomplish this task, the Commission conducts informational seminars, prepares and distributes handouts, campaign finance handbooks, lobbying handbooks, and conflict of interests laws brochures. In addition, the telephone is used extensively to provide information and advice. In FY 2010, the Commission's staff made fifteen presentations. Nine speeches were made to state boards and employees of various state agencies, four campaign finance seminars were given, one speech was given to a state association, and one speech was given to a civic organization.

Advisory Opinions

Advisory opinions are issued by the Commission to clarify the application of the statutes in a particular situation. The Commission can issue these opinions on its own initiative or in response to individual inquiries. If an individual requests an opinion and conducts him or herself according to the guidelines in the opinion, he or she is presumed to be in compliance with the law.

Twelve opinions were issued in FY 2010. Eleven opinions were issued in response to inquiries by individuals and one opinion was initiated by the Commission to provide guidance to candidates, office holders and other individuals subject to the Campaign Finance Act. Since 1974, the year the Commission was established, through June 30, 2010, the Commission has issued a total of 1,203 advisory opinions. A synopsis of each advisory opinion issued in FY 2010 can be found at the conclusion of this report.

FY 2010 Advisory Opinions

Campaign Finance – 3
Lobbying – 0
State Conflict of Interests – 8
Local Conflict of Interests – 1

Review & Audit Program

Complete, accurate and timely disclosure of certain kinds of financial information by candidates, elected officials, state employees and lobbyists is the key requirement of the legislation. It is the Commission's position that active review and auditing of reports is essential for the proper administration of the law.

CAMPAIGN FINANCE

In the area of campaign finance, the Commission's procedures include a preliminary review and post-election comprehensive desk review of all receipts and expenditures reports filed. In addition, a certain number of campaigns and committees are selected for field audits.

Candidates, party committees, and political committees filed only one receipts and expenditures report in FY 2010, a non-election year. A total of 1,170 receipts and expenditures reports received comprehensive desk reviews.

On June 10, 2010, 380 state candidates and 313 county candidates filed for office. In the Spring of 2010, 19 first class city candidates filed for office.

Audits

Audits of the records of candidates and political action committees are conducted using generally accepted auditing standards and are conducted on a priority basis. Accorded first priority are situations involving formal complaints. The next priority is assigned to situations in which it is necessary to clarify problems identified during the desk reviews. A general investigation may also be authorized at this point.

Finally, a random sample of candidates and committees is audited. If a candidate is selected for a random audit, his or her opponent is also examined. In FY 2010, 17 audits were conducted.

FY 2010 Campaign Finance Statistics

- Candidates for 2010 State Office 380
- Carryover State Candidates 352
- Candidates for 2010 County Office 313
- Carryover County Candidates 137
- Candidates for 2010 First Class City Office 19
- Carryover First Class City Candidates 170
- Political Action Committees 244
- Party Committees 182
- Campaign Finance Reports Filed 1,170
- Failure to File Notices Issued 49
- Error or Omission Notifications Issued 98

CONFLICT OF INTERESTS

The Kansas conflict of interests statutes provide for (1) the filing of statements of substantial interests; (2) a code of conduct making it illegal for state officials and employees to be involved in certain conflicts; and (3) the issuance of advisory opinions.

In past years, the Commission's staff processed approximately 9,000 to 9,500 state officer and employee financial disclosure statements. Computer systems are used to create and maintain lists of state officers and employees subject to the disclosure requirements. Throughout the year, staff updates computer databases as appointments are made, terms end, officials resign, and new positions are created. Financial disclosure forms and instructions are mailed to new appointees and candidates as the Commission receives official notice of their appointment or eligibility. Thereafter, forms and instructions are mailed on an annual basis to all persons subject to filing requirements. All financial disclosure statements are public records and may be reviewed during regular business hours in the Secretary of State's office or on the Secretary of State's website. Those required to file Statements of Substantial Interests are elected state officials and candidates for such office, individuals whose appointments are subject to confirmation by the Senate, general counsels for state agencies, and state officers, employees, and members of boards, councils or commissions meeting the definition of a "designee" and so listed by the head of their agency. There were 9,519 individuals required to file statements in FY 2010.

2010 Statements of Substantial Interests Filings

- Employees Listed as Designees 8599
- Elected Officials 177
- State Candidates 156
- Appointees Subject to Senate Confirmation 88
- Board Members Listed as Designees 465
- General Counsels 34

The Commission has found that the conflict statutes are not widely understood either by state officers, state employees or the public at large, yet these laws are of fundamental importance to the workings of state government. They draw the line between private interests and the public trust which must be guarded carefully. Efforts to clarify and enforce the line are increasingly important as public concern mounts over abuses of the public trust.

Many state officials and employees are in a position to make or influence decisions which could directly affect their personal interests. The state conflict of interests laws prohibit such activity. To assist these individuals, the Commission issues advisory opinions upon its own initiative and upon the request of any person to whom the relevant law applies. In FY 2010, the Commission issued 8 opinions to state officers and employees concerning their positions, personal interests and how the conflict laws applied to them.

REPRESENTATION CASE DISCLOSURE

There were two Representation Case Disclosure Statements filed in FY 2010. It is possible that other individuals required to file such statements have not done so. However, given the structure of the statutory requirements, there is no way of knowing who should file such statements.

LOBBYING PROVISIONS

There are 520 lobbyists registered for calendar year 2010 as of September 1, 2010. This compares with the total of 581 registered lobbyists in 2009. Of the 520 registered, some are registered on behalf of more than one person or organization. To date, 1,495 organizations or persons have been represented this year. This compares to 1,508 organizations being represented by a lobbyist in 2009. The Commission's statistical analysis of the lobbyist

employment and expenditures reports filed shows that \$1,345,717 has been spent on lobbying activities through August 31, 2010. Registered lobbyists are required to file a lobbyist employment and expenditures report six times a year. These reports show expenditures if the lobbyist spent more than \$100 in a reporting period. To date this calendar year, 4,826 Lobbyist Employment and Expenditures Reports have been filed. A lobbyist can file an Affidavit of Exemption from filing the Lobbyist Employment and Expenditures Report if he or she does not expend in excess of \$100 in any reporting period.

Lobbyist Registrations and Expenditures

To Date for Calendar Year 2010

- Number of Registered Lobbyists 520
- Number of Lobbyist Registration Statements Filed 1,495
- Number of Reports Filed by Lobbyists 4,826
- Number of Affidavits of Exemption Filed 595
- Total of Expenditures for Year to Date \$1,345,717
- Past Due Notices Mailed 164
- Number of Failure to File Notices Issued 51

Investigations

In FY 2010, the Commission initiated 16 inquiries and conducted 15 investigations. Investigations can be conducted prior to a complaint being filed or following the filing of a complaint. Inquiries and investigations remain confidential by the Commission and staff of the Commission until a complaint has been filed and a probable cause determination has been made regarding the complaint. Whenever an investigation does not disclose facts sufficient to warrant further action, the Commission may issue a report concerning the findings of the Commission to the person or persons investigated. This report can be made public by the person or persons investigated.

Enforcement Program

COMPLAINTS

There were 15 complaints filed in FY 2010. All 15 complaints were filed for campaign finance violations. Fourteen of the complaints were dismissed on the basis that there was insufficient evidence to support a probable cause determination. Two complaints went to public hearing. One of the complaint hearings was a result of a complaint filed in FY 2009. It should be understood that after an investigation, if the Commission concludes there is no evidence to establish probable cause that there was an intentional violation, a complaint is dismissed and no public hearing is held. Anyone who suspects that any of the provisions administered by the Commission have been violated may file a complaint in writing with the Commission.

CIVIL PENALTIES & FINES

The statutes enforced by the Commission provide for the assessment of civil penalties for failure to file certain reports or statements under the campaign finance, lobbying and state conflict of interests statutes. Individuals can be subject to a \$10 per day penalty for each day the report or statement remains unfiled up to a maximum of \$300. The Commission is authorized to waive any imposed civil penalty, upon a finding of good cause. There were \$8,230 in civil penalties assessed in FY 2010. The Commission collected \$6,080 in civil penalties and waived \$1,340 in civil penalties. Several civil penalties assessed in FY 2010 remain outstanding.

In addition to any other penalty prescribed under the campaign finance, lobbying or state conflict of interests statutes, the Commission can assess a civil fine not to exceed \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for the third and each subsequent violation. Before a civil fine can be assessed, the person must be given proper notice and an opportunity to be heard. The Commission conducted four civil fine hearings in FY 2010. Civil fines in the amount of \$5,600 were assessed and \$5,850 collected in FY 2010.

FY 2010 Civil Penalties and Fines

Campaign Finance Civil Penalties Assessed - \$2,580

Lobbying Civil Penalties Assessed – \$3,780

Statement of Substantial Interests Civil Penalties Assessed - \$1,870

Total Civil Penalties Assessed – \$8,230

Total Civil Penalties Waived - \$1,340

Total Civil Penalties Collected - \$4425

Total Civil Fines Assessed – \$5,600

Total Civil Fines Collected - \$5,850

Commission Recommendations

The Commission is directed by statute to make recommendations to the Governor and Legislature. It recognizes that any major piece of legislation periodically needs revision, modification, and in some cases, major changes. To that end, the Commission makes the following recommendation:

- 1. The Commission believes that candidate, political action committee, and lobbyist registration fees should be increased to generate more revenue for the agency's fee fund. Registration fees have not been increased for 10 years. Due to the State's financial difficulties, the Commission's fee fund has been used to make up the shortage of General Fund appropriations to fund the agency's current level of operations the past few years. The carryover fee funds from FY 2010 were \$420,896. The fee fund projected to be carried forward to FY 2014 will be \$60,522. In FY 2014, the Commission's fee fund will become depleted and the agency will need to rely solely on State General Fund appropriations to fund the agency's operations. The fee fund is expected to provide \$263,177 in funding for FY 2011 and \$258,491 in 2012. To keep the fee fund viable, an increase in fees will be required.
- 2. For over a decade, issue ads, with the purpose of influencing elections, have dramatically increased in Kansas. Under current Kansas law, the contributors who fund issue ads or electioneering communications and the amount of money expended on these communications are not reportable. The Commission believes it is unacceptable to interfere with the First Amendment rights of those who wish to have their voices heard on issues during an election. However, the Commission believes the rights of the voters to know who is paying for the TV commercials, radio ads and direct mail brochures that inundate them, is just as important. The Commission recommends that any person who spends \$500 or more on an electioneering communication or issue ad which is disseminated, broadcast, or otherwise published within 30 days before a primary election or 60 days before a general election be required to file a report disclosing the name of the candidate mentioned in the communication, and the name and address of the vendor(s) who paid more than \$50 for the communication. Enacting this recommendation into law will mean Kansas voters can go to the polls with the necessary knowledge of who is funding the campaign debates to which they are exposed and to make an informed decision when they cast their ballot.

Appendix I

SUMMARY

OF

ADVISORY OPINIONS

ISSUED IN

FY 2010

OPINION NO. 2009-07 - ISSUED - July 22, 2009

Conflict of interest laws applicable to local government officials do not prohibit a Councilmember from accepting a door prize. The Councilmember cannot participate in the making of a contract if he has a substantial interest in the entity seeking the contract. The Councilmember can participate and vote on ordinances or other matters if he has filed a Statement of Substantial Interests.

OPINION NO. 2009-08 - ISSUED - August 19, 2009

A Kansas Department of Wildlife and Parks employee does not violate K.S.A. 46-235 by accepting an outside job as a high school volleyball coach.

OPINION NO. 2009-09 - ISSUED - September 16, 2009

Kansas Bureau of Investigation employees may not accept outside employment that includes the same duties as those performed in the employee's official state capacity.

OPINION NO. 2009-10 - ISSUED - September 16, 2009

A pre-existing contract between two CURB members does not violate the state level conflict of interests laws.

OPINION NO. 2009-11 - ISSUED - September 16, 2009

The Kansas State Treasurer's Office may not accept season tickets and sell them to an employee or give them to an employee through a no cost drawing.

OPINION NO. 2009-12 - ISSUED - November 18, 2009

A state officer may be retained as a lobbyist to lobby the state legislature. A state officer may not lobby his own state agency.

OPINION NO. 2009-13 - ISSUED - December 16, 2009

A state employee may not be substantially involved in the making of any negotiated contract between his/her employer and an outside entity that employs the state employee. A state employee can not participate directly in the administration or enforcement of a contract between

his/her state employer and the outside entity, and no confidential information gained in his/her state employment could be used without violating the state conflict of interest laws.

OPINION NO. 2010-01 - ISSUED - January 20, 2010

The Campaign Finance Act does not prohibit an unclassified employee from running for statewide office. The Campaign Finance Act does not define "time" as used in K.S.A.25-4169a.

OPINION NO. 2010-02 - ISSUED - February 17, 2010

A lease agreement between a state agency and a business owned by a state senator is permissible if the requirements of K.S.A. 46-238, K.S.A. 46-239(c) and K.S.A. 46-241 are met.

OPINION NO. 2010-03 - ISSUED - February 17, 2010

The position of Supreme Court Justice is not included in the definition of "state officer"; therefore, the Campaign Finance Act does not govern retention elections for the Supreme Court.

OPINION NO. 2010-04 - ISSUED - March 24, 2010

A KDOT employee may create a consulting business if she does not participate or prepare a contract between KDOT and her business; is not compensated for performing services which are part of her official duties; and does not disclose or use confidential information acquired from employment with KDOT.

OPINION NO. 2010-05 - ISSUED - May 18, 2010

TO ALL INTERESTED PERSONS: K.S.A. 25-4157a (c) prohibits a candidate from contributing such candidate's campaign funds to a party committee with direction that such funds be distributed to other specified candidates.

Appendix II

STATISTICAL

COMPARISON OF

LOBBYING

EXPENDITURES

2000 - 2010

SUMMARY OF LOBBYIST REGISTRATIONS AND EXPENDITURES 2000-2010 Number of Entertainment Communications Other 💨 Year to Food & Beverage Recreation Mass ? Total Lobbyists/ Gifts Date. Media. Registrations Honoraria and Payments 555 1263 414,197.05 12,573.25 16,335.70 1,814.30 37,164.29 13,976.04 496.060.63 2000 494,419.19 583 1378 367.343.10 12.408.11 26.320.26 18,842.30 41,418.57 28,086.85 2001 13,294.82 21,975.31 558 1329 5,325.88 79,886.09 16,693.73 472,541.96 335,366.13 2002 7°02000 // 487,506.36 587 1396 369,114.67 15.844.26 20.693.29 33,954.74 33,800.07 14,099.33 2003 574 1387 328,854.76 15,382.55 24,974.60 108.783.10 110.322.63 5.656.65 593,974.29 2004 14,398.57 1287 463,164.76 11,508.06 22,007.16 24,548.51 24,578.31 560,205.37 561 2005 938,744.72 554 1376 429,510.28 13,260.92 21,821.84 412,395.48 54,433.56 7,322.64 2006 19,805.07 556 1401 505,234.60 12,197.14 573,045.29 39,101.18 20,689.72 1,170,073.00 2007 17.841.46 1,331,252.29 592 1476 466.685.50 16,705.96 14.644.60 553,355.97 262,018.80 2008 259,965.44 582 1513 425,089.20 14,796.49 12,967.70 437,997.76 24,998.41 1,175,815.00 2009 374,064.45 9,822.94 632,479.00 305,535.43 14,371.22 1,345,716.93 520 1495 9,443.89 2010 YTD

KANSAS GOVERNMENTAL ETHICS COMMISSION